



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

BCS/146610

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 14, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Juneau County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on February 21, 2013. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FOO-146609.

The issue for determination is whether it was correct to include petitioner's boyfriend in petitioner's Badger Care Plus MA ["BC+"] fiscal test group.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: April Lee, ESS

Juneau County Department of Human Services  
Courthouse Annex  
220 E. LaCrosse Street  
Mauston, WI 53948

**OTHER PERSONS PRESENT:**

[REDACTED], petitioner's boyfriend  
Gregory Thiele, Investigator, O'Brien & Associates

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Juneau County.
2. Petitioner has a boyfriend ["EEG"]: petitioner and EEG have a minor child in common ("LKG"; female; age 1 year); they have been in a relationship for 3 years.
3. EEG has earned income; the County included EEG in petitioner's BC+ test group because petitioner and EEG reside together.
4. The County discontinued petitioner's BC+ effective November 30, 2012 because EEG's income put petitioner over the BC+ income limit.

**DISCUSSION**

BC+ eligibility depends, in part, on family income. Wis. Stat. §§ 40.471(1)(e) & (f); and, 49.471(4)(a) & (b) (2011-12). *Family income* means the total gross earned and unearned income received by all members of a family. Wis. Stat. §§ 40.471(1)(f) (2011-12). Two persons who reside in the same home (i.e. live together) and have a child in common are a *family*. Wis. Admin. Code §§ DHS 103.04(7)(a) & (b) (December 2008). *Badger Care + Eligibility Handbook* ["BC+EH"] 2.2. & 2.6.

This matter must be decided by a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (2001).

Petitioner and EEG testified that they did not live together. They testified that petitioner lived in her mother's house and that EEG lived in a house that was owned by his father (both in the same small town). They testified that they stay at each other's house on occasion but that they do not "live together". Petitioner produced numerous documents to show that she and EEG have different addresses.<sup>1</sup> However, the County does not deny that they have different addresses. The County claims that they live together and go back and forth between the 2 houses. The County basis this claim on admissions made by petitioner to the County worker and by admissions made by petitioner, by EEG, and by petitioner's mother to an investigator from *O'Brien & Associate*. Petitioner and EEG deny that they made those admissions. This is not credible. Petitioner and EEG admit that they have been in a relationship for 3 years, have a child in common, and stay with each other at least "on occasion." The preponderance of the credible evidence in the record of this matter is that petitioner and EEG live together as claimed by the County. It follows that the County's conclusion that petitioner and EEG live together must be sustained.

**CONCLUSIONS OF LAW**

For the reasons discussed above, it was correct to include petitioner's boyfriend (EEG) in petitioner's BC+ fiscal test group.

**NOW, THEREFORE, it is**

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<sup>1</sup> A letter from EEG's father; a 2012 W-2 Wage and Tax Statement; a paycheck stub from EEG's employer; a 2012 tax Form 1099-R; a US Cellular bill; a Wisconsin Certificate of Vehicle Registration; an Alliant Energy bill; a Wisconsin License Plate Renewal Notice; another Wisconsin Certificate of Vehicle Registration; a Wisconsin Certificate of Title; a Wisconsin Department of Workforce Development ["DWD"] Information and Instructions About Your Claim letter; a Capitol One credit card bill; a dish Network letter; a DWD Claim Confirmation and Instructions letter; a Stipulation & Order For Support filed in Juneau County Circuit Court on January 25, 2012.

**ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 4th day of March, 2013

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 4, 2013.

Juneau County Department of Human Services  
Division of Health Care Access and Accountability